Akin Law Group PLLC
Robert D. Salaman (RS 2904)
45 Broadway, Suite 1420
New York, NY 10006
(212) 825-1400
rob@akinlaws.com
Counsel for Plaintiff, FLSA Collective Plaintiffs and the Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ERIC DONALDSON,
on behalf of himself, FLSA Collective Plaintiffs and the Class,

Plaintiffs,

-against-

3840 BAY INC. d/b/a KARL'S KLIPPER and KARL REINA, in his individual capacity,

Defendants.

--X

Civil Action No.

CLASS AND COLLECTIVE ACTION COMPLAINT

Jury Trial Demanded

Plaintiff ERIC DONALDSON ("Plaintiff"), on behalf of himself and others similarly situated, by and through his undersigned attorneys, hereby files this Class and Collective Action Complaint against Defendants 3840 BAY INC. d/b/a KARL'S KLIPPER ("Corporate Defendant") and KARL REINA ("Individual Defendant", collectively with the Corporate Defendant, the "Defendants") and states, upon information and belief, as follows:

INTRODUCTION

1. Plaintiff alleges, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§201 *et. seq.* ("FLSA") that he and others similarly situated are entitled to recover from Defendants: (1) unpaid overtime, (2) liquidated damages, and (3) attorneys' fees and costs.

2. Plaintiff further alleges that, pursuant to the New York Labor Law ("NYLL"), he and others similarly situated are entitled to recover from Defendants: (1) unpaid minimum wage, (2) unpaid overtime, (3) unpaid spread-of-hours premium, (4) statutory penalties, (5) liquidated damages, and (6) attorneys' fees and costs.

3. Defendants operate a restaurant, at which Plaintiff, FLSA Collective Plaintiffs and Class members worked. During his employment with the Defendants, Plaintiff was first paid a flat rate of $7.30 per hour and later a flat rate of $8.00 per hour, solely in cash. Despite regularly working in excess of forty hours per week and ten hours per day, Plaintiff was not paid proper minimum wage, overtime or spread-of-hours.

4. Plaintiff, FLSA Collective Plaintiffs, and Class Members were denied proper minimum wage, overtime pay and spread-of-hours pay.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this controversy pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 1337 and 1343, and has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

6. Venue is proper in the Eastern District pursuant to 28 U.S.C. § 1391 because Plaintiff resides in this district and because Defendants' business is located in this district.

PARTIES

7. Plaintiff ERIC DONALDSON ("Plaintiff"), for all relevant time periods, was and is a resident of Richmond County, New York.

8. The Defendants operate a dining establishment which includes a bar and restaurant.

9. Corporate Defendant:

a. 3840 BAY INC. d/b/a KARL'S KLIPPER ("KARL'S KLIPPER") was and is a domestic business corporation organized under the State of New York with an address of service of process located at c/o 29 Duer Lane, Staten Island NY 10301, and a principal place of business located at 38-40 Bay Street, Staten Island NY 10301, that operates as a restaurant.

10. Individual Defendant:

a. KARL REINA was and is the chief executive officer, owner and/or principal of the Corporate Defendant. KARL REINA exercises operational control as it relates to all employees including Plaintiff, FLSA Collective Plaintiffs and the Class. KARL REINA exercises the power to fire and hire employees, supervise and control employees' work schedules and conditions of employment, affect the quality of the employee's employment and determine the rate and method of compensation of employees including those of Plaintiff, FLSA Collective Plaintiffs and the Class. At all times, employees could complain to KARL REINA directly regarding any of the terms of their employment. KARL REINA directly reprimanded and reprimands employees regarding the performance of their duties. KARL REINA had and has the authority to fire and hire, supervise and control work schedules and conditions of employment, and determine rate and method of pay of managerial employees who directly supervise Plaintiff, FLSA Collective Plaintiffs and the Class. KARL REINA exercises functional control over the business and financial operations of the Corporate Defendant. KARL REINA ensures and ensured that employees properly prepare food and effectively serve and cater to customers to ensure that the Corporate Defendant is operating efficiently and profitably. KARL REINA regularly visited and continues to visit the Corporate Defendant.

11. At all times relevant, the Corporate Defendant was and continues to be an "enterprise engages in commence" within the meaning of the FLSA.

12. At all times relevant, the work performed by Plaintiff, the FLSA Collective Plaintiff and Class Members was directly essential to the businesses operated by Defendants.

FLSA COLLECTIVE ACTION ALLEGATIONS

13. Plaintiffs bring claims for relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all non-exempt employees (including restaurant staff, drivers, delivery persons, waiters, busboys, food runners, cooks, line-cooks, food prepares, dishwashers and maintenance staff) employed by Defendants on or after the date that is six years before the filing of the Complaint in this case as defined herein ("FLSA Collective Plaintiffs.")

14. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay

provisions, and are and have been subjected to Defendants' decisions, policies, plans, programs, practices, procedures, protocols, routines, and rules, all culminating in a willful failure and refusal to pay them proper minimum wage, proper overtime premium at the rate of one and one half times the regular rate for work in excess of forty (40) hours per workweek and spread-of-hours pay. The claims of Plaintiff stated herein are essentially the same as those of the FLSA Collective Plaintiffs.

15. The claims for relief are properly brought under and maintained as an opt-in collective action pursuant to § l6 (b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from the Defendants. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last known address of Defendants.

RULE 23 CLASS ALLEGATIONS – NEW YORK

16. Plaintiff brings claims for relief pursuant to the Federal Rules of Civil Procedure ("F.R.C.P.") Rule 23, on behalf of all non-exempt employees (including restaurant staff, drivers, delivery persons, waiters, busboys, runners, cooks, line-cooks, food prepares, dishwashers and maintenance staff) employed by Defendants on or after the date that is six years before the filing of the Complaint in this case as defined herein (the "Class Period").

17. All said persons, including Plaintiffs, are referred to herein as the "Class." The Class members are readily ascertainable. The number and identity of the Class members are determinable from the records of Defendants. The hours assigned and worked, the position held, and rates of pay for each Class member may also be determinable from Defendants'

records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under F.R.C.P. 23.

18. The proposed Class is so numerous such that a joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Although the precise number of such persons is unknown because the facts on which the calculation of that number rests presently within the sole control of Defendants, there is little doubt that there are more than twenty (20) members of the Class.

19. Plaintiff's claims are typical of those claims that could be alleged by any member of the Class, and the relief sought is typical of the relief, that would be sought by each member of the Class in separate actions. All the Class members were subject to the same corporate practices of Defendants and Defendants benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiffs and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

20. Plaintiff is able to fairly and adequately protect the interests of the Class and have no interests antagonistic to the Class. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented plaintiffs in wage and hour cases.

21. A class action is superior to other available methods for the fair and efficient adjudication of the controversy - particularly in the context of the wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit

against Corporate Defendants. Class action treatment will permit a large number of similarly situated persons to prosecute common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because losses, injuries and damages suffered by each of the individual Class members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Class members to redress the wrongs done to them. On the other hand, important public interest will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications. With respect to the individual members of the Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this as a class action.

22. Defendants and other employers throughout the state violate the New York Labor Law. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the Complaint a degree of anonymity,

which allows for the vindication of their rights while eliminating or reducing these risks.

23. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

a. Whether Defendants employed Plaintiff and the Class within the meaning of the New York Labor Law;

b. What are and were the policies, practices, programs, procedures, protocols and plans of Defendants regarding the types of work and labor for which Defendants did not pay the Class members properly;

c. At what common rate, or rates subject to common methods of calculation, was and are Defendants required to pay the Class members for their work;

d. Whether Defendants provided Plaintiff and the Class with the proper minimum wage and overtime rate for their work as required by the New York Labor Law;

e. Whether Defendants provided Plaintiff and the Class with the proper spread-of-hours premium as required by the New York Labor Law; and

f. Whether Defendants properly notified Plaintiff and the Class members of their hourly rate and overtime rate.

STATEMENT OF FACTS

24. At all relevant times, Defendants employed Plaintiff, FLSA Collective Plaintiffs and Class members within the meaning of the FLSA.

25. At all relevant times, Corporate Defendant had and has gross annual revenue in excess of $500,000.00.

26. On or about February 8, 2014, Plaintiff DONALDSON commenced employment

with Defendant KARL'S KLIPPER.

27. Plaintiff DONALDSON was hired by Defendant KARL REINA.

28. While employed by the Defendants, Plaintiff DONALDSON's job responsibilities, included but were not limited to: dishwashing, maintenance, cooking, delivery, prepping food, picking up trash, cleaning/wiping furniture, and taking money to the bank for Defendant KARL REINA.

29. For approximately the first six months of his employment, Plaintiff DONALDSON was paid a flat rate of seven dollars and thirty cents per hour ($7.30), solely in cash.

30. From approximately August 2014 to present, Plaintiff DONALDSON was paid a flat rate of eight dollars per hour ($8.00), solely in cash.

31. During his employment with the Defendants, Plaintiff DONALDSON regularly worked in excess of forty hours per work.

32. Specifically, Plaintiff DONALDSON typically worked eleven hour shifts Monday, Tuesday and Wednesday; nine hour shifts on Thursday and Friday; and ten-to-eleven hour shifts on Saturday.

33. During the course of his employment with the Defendants, Plaintiff DONALDSON was not paid the proper minimum wage rate.

34. During the course of his employment with the Defendants, Plaintiff DONALDSON was not paid the proper overtime wage rate for hours worked over forty in a given week.

35. During the course of his employment with the Defendants, Plaintiff

DONALDSON was not paid spread-of-hours pay for hours worked in excess of ten per day.

36. At all relevant times herein, Defendants failed to pay Plaintiff DONALDSON, the FLSA Collective Plaintiffs and Class Members the proper minimum wage.

37. At all relevant times herein, although Plaintiff DONALDSON, the FLSA Collective Plaintiffs and Class Members regularly worked in excess of forty (40) hours per week, Defendants failed to pay Plaintiff DONALDSON the FLSA Collective Plaintiffs and Class Members at the proper overtime rate (one and one-half the regular rate of pay).

38. Although Plaintiff DONALDSON the FLSA Collective Plaintiffs and Class members regularly worked in excess of ten (10) hours in any given day, Defendants never paid Plaintiff DONALDSON, the FLSA Collective Plaintiffs and Class Members the "spread of hours" premium as required by the NYLL.

39. Defendants never informed Plaintiff DONALDSON, FLSA Collective Plaintiffs and Class Members in writing as to their hourly rate of pay or their overtime rate of pay.

40. Defendants failed to provide Plaintiff DONALDSON, the FLSA Collective Plaintiffs and Class Members proper wage statements in violation of the NYLL.

41. At all relevant times, Defendants are/were required to establish, maintain and preserve for not less than six years, payroll records for each employee, which includes: name and address, social security number, wage and overtime rates, hours employed, deductions made etc., in compliance with NYLL § 195 and 12 NYCRR § 142-2.6.

42. At all relevant times, Defendants were and are required to establish, maintain and preserve for not less than six years, notice of the rate of pay at the time of hiring and subsequent notices when pay rate changed in compliance with NYLL § 195 and 12 NYCRR §

142-2.6.

43. At all relevant times, Defendants are and were required to establish, maintain and preserve for not less than six years, weekly payroll records that show for each employee, among other information, the number of hours worked daily and weekly including the time of arrival and departure of each employee in compliance with NYLL § 193, 12 NYCRR § 142-2.6 and 12 NYCRR § 142-2.7.

44. Defendants knowingly and willfully operated their business with a policy of not paying the required New York State minimum wage to Plaintiff, FLSA Collective Plaintiffs and Class Members.

45. Defendants knowingly and willfully operated their business with a policy of not paying either the FLSA overtime rate (of time and one-half) or the New York State overtime rate (of time and one-half) to Plaintiff, FLSA Collective Plaintiffs and Class members.

46. Defendants purposely schemed a plan to circumvent the payment of hourly overtime rates to the Plaintiff, FLSA Collective Plaintiffs and Class members.

47. Defendants knowingly and willfully operated their business with a policy of not paying the New York State "spread of hours" premium to Plaintiff, FLSA Collective Plaintiffs and Class members.

48. Defendants knowingly and willfully operated their business with a policy of not providing proper wage statements as required under the New York Labor Law.

49. Defendants failed to provide a wage statement in compliance with statutory requirements under the NYLL.

50. Defendants failed to provide proper wage and hour notices, at date of hiring and

annually, to all non-exempt employees in compliance with statutory requirements under the NYLL.

51. Plaintiff retained Akin Law Group, PLLC to represent Plaintiff, FLSA Collective Plaintiffs and Class members, in this litigation and has agreed to pay the firm a reasonable fee for its services.

FIRST CAUSE OF ACTION
(FLSA Overtime Violations)

52. Plaintiff, on behalf of himself and FLSA Collective Plaintiffs and Class Members, realleges and incorporates by reference all preceding paragraphs as if they were more fully set forth herein in length.

53. Throughout the statute of limitations period covered by these claims, Plaintiff and the other FLSA Collective members worked in excess of forty (40) hours per workweek.

54. At all relevant times, Defendants willfully, regularly and repeatedly failed to pay Plaintiffs, FLSA Collective Plaintiffs and Class Members at the required overtime rate, one-and-one-half times the regular rate of pay for work performed in excess of forty (40) hours per workweek.

55. Defendants failed to properly disclose or apprise Plaintiffs, FLSA Collective Plaintiffs and Class Members of their rights under FLSA.

56. At all relevant times, the Defendants are and were engaged in a policy and practice of refusing to pay overtime compensation at statutory rate of time and one-half to Plaintiffs, FLSA Collective Plaintiffs and Class members for their hours worked in excess of forty hours per workweek.

57. Due to the intentional, willful and unlawful acts of Defendants, Plaintiffs, FLSA

Collective Plaintiffs and Class members suffered damages in an amount not presently ascertainable of unpaid overtime wages, plus an equal amount as liquidated damages.

58. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs and Class Members seeks damages in the amount of their respective unpaid overtime compensation, liquidated damages as provided by the FLSA for overtime violations, attorneys' fees and costs, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

SECOND CAUSE OF ACTION
(NYLL Overtime Violations)

59. Plaintiff on behalf of himself, FLSA Collective Plaintiffs and Class Members, realleges and incorporates by reference all preceding paragraphs as if they were more fully set forth herein in length.

60. It is unlawful under the New York Labor Law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hours in any workweek.

61. Throughout the Class Period, Defendants willfully, regularly and repeatedly failed to pay Plaintiff, FLSA Collective Plaintiffs and Class Members required overtime rates, one-and-one-half times their regular rate of pay for hours worked in excess of forty (40) hours per workweek.

62. As a result of Defendants' willful and unlawful conduct, Plaintiff and Class Members are entitled to an award of damages, including liquidated damages, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by NYLL § 663.

THIRD CAUSE OF ACTION
(NYLL Minimum Wage)

63. Plaintiff, on behalf of himself and FLSA Collective Plaintiffs and Class Members, realleges and incorporates by reference all preceding paragraphs as if they were more fully set forth herein in length.

64. It is unlawful under New York Labor Law for an employer to suffer or permit a non-exempt employee to work without paying (or paying less than) the legally required New York State minimum wage.

65. Throughout the Class Period, Defendants willfully, regularly and repeatedly failed to pay Plaintiff, FLSA Collective Plaintiffs and Class Members the required minimum wage.

66. As a result of Defendants' willful and unlawful conduct, Plaintiff and members of the Class are entitled to an award of damages, including liquidated damages, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by NYLL § 663.

FOURTH CAUSE OF ACTION
(NYLL – Unpaid Spread-Of-Hours)

67. Plaintiff, on behalf of himself and FLSA Collective Plaintiffs and Class Members, realleges and incorporates by reference all preceding paragraphs as if they were more fully set forth herein in length.

68. Plaintiffs, FLSA Collective Plaintiffs and Class Members regularly had workdays that lasted more than ten (10) hours.

69. Defendants failed to provide the "spread of hours" premium as required by 12

NYCRR § 142-2.18.

70. Defendants willfully and intentionally failed to compensate Plaintiff, FLSA Collective Plaintiffs and Class Members one hour's pay at the basic New York minimum hourly wage rate when their workdays exceeded ten (10) hours, as required by the New York Labor Law.

71. As a result of Defendants' willful and unlawful conduct, Plaintiff and members of the FLSA Collective are entitled to an award of damages, including liquidated damages, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by NYLL § 663.

FIFTH CAUSE OF ACTION
(NYLL - New York Notice Requirements)

72. Plaintiff, on behalf of himself and FLSA Collective Plaintiffs and Class Members, realleges and incorporates by reference all preceding paragraphs as if they were more fully set forth herein in length.

73. Defendants did not provide Plaintiff and the members of the FLSA Collective with the notices required by NYLL § 195.

74. As a result of Defendants' unlawful conduct, Plaintiff, FLSA Collective Plaintiffs and Class Members are entitled to an award of damages pursuant to N.Y. Lab. Law § 198, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

75. Defendants failed to properly notify employees of their hourly pay rate and overtime rate, in direct violation of the New York Labor Law § 195 and 12 NYCRR § 142-2.6.

76. Defendants failed to provide a proper wage and hour notice, at the date of hiring and annually, to all non-except employees per requirements of the New York Labor Law § 195 and 12 NYCRR § 142-2.6.

77. Defendants failed to provide proper wage statements with every payment as required by New York Labor Law § 195(3).

78. Due to the Defendants' New York Labor Law violations, Plaintiff, FLSA Collective Plaintiffs and Class Members are entitles to recover from Defendants their unpaid overtime, unpaid spread of hours premium, reasonable attorneys' fees, liquidated damages, statutory penalties and costs and disbursements of the action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself, FLSA Collective Plaintiffs and Class members, respectfully requests that this Court grant the following relief:

a. Designation of this action as a collective action on behalf of the FLSA Collective Plaintiffs and Class Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Collective, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

b. Designation of Plaintiff as Representative of the FLSA Collective Plaintiffs and Class Members;

c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

d. An injunction against Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

e. An award of unpaid minimum wage due under the New York Labor Law;

f. An award of unpaid overtime compensation due under the FLSA and the New York Labor Law;

g. An award of unpaid spread of hours premium due under the New York Labor Law;

h. An award of statutory penalties as a result of Defendants' failure to comply with the FLSA and the New York Labor Law wage notice and wage statement requirements;

i. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay minimum wage pursuant to the New York Labor Law;

j. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay overtime compensation and spread of hours premium pursuant to the FLSA and the New York Labor Law;

k. An award of prejudgment and post judgment interest, costs and expenses of this action together with reasonable attorneys' and expert fees and statutory penalties;

l. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable as of right by jury.

Dated: November 22, 2016
New York, New York

Respectfully submitted,

Akin Law Group PLLC

/s/ Robert D. Salaman

Robert D. Salaman (RS 2904)
45 Broadway, Suite 1420
New York, New York 10006
(212) 825-1400

Counsel for Plaintiff, FLSA Collective Plaintiffs and the Class